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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE? 1998

BEFORE

THE HON'BLE MR.JUSTICE V.K.SINGHAL

WRIT PETITION NOS:15741/1998 c/w 18009-19/98

W.P.18290/1998 and 18406-18505/1998.

BETWEEN: 15741/1998

M/S.Unicorn Bar and Rest.,  
94/3, 1st floor, Infantry Road,  
Opp;Kalpatharu Super Bazar,  
Bangalore 560 001.  
rep by its partner,  
Sri.Vasudev R.Desai;

PETITIONER

(By Sri.A.R.Holla, Adv.,)

AND:

1. State of Karnataka  
by its Secretary  
Finance Dept.,  
Vidhanasoudha  
Bangalore.

2.The Commr of comml., taxes  
Comml Tax Building,  
KG Road, Gandhinagar,  
Bangalore.

3. Asst Commr., of Comml, Taxes,  
16th Circle,  
Commercial Tax Building,  
KG Road, Bandhinagar,  
Bangalore 9

RESPONDENTS

W.P.No.18009-18019/1998

1. Sri.Vinayaka Stores,  
Prop: M.Mohan Shet,  
s/o late M.Dathathreya Shet,  
58 yrs  
CL I Licencee,  
147, II Cross, V Main,  
Chamarajpet, Bangalore-18

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2. Rohini Wines,  
Cl-2 Licencee  
Prop. Smt. B. Bharatha Laxmi  
d/o late B. L. Badhran,  
138, I Main Road, Chamarajpet,  
Bangalore- 560 018.

3. Bangalore Wine Stores  
prop: B. Bharatha Laxmi  
d/o B. L. Badran  
32, Mysore Road,  
Bangalore-2.

4. M. Mohan Shet,  
s/o late Dathtreya Shet  
Cl-2 Licencee,  
56, 6th main, Appu rao Road,  
Chamarajpet Bangalore-18

5. Swathi Wine store  
Prop. M. Mohan Shet,  
s/o late Dathatreya Shet,  
Gandhinagar  
Bangalore-9

6. Nirmala Wine Merchants,  
by its Prop. M. Moahn Shet,  
s/o Datatreya Shet,  
Cl-2 Licencee, 77/1 JC Road,  
Bangalore.

7. Ashoka Wine Stores,  
by its Prop M. Mohan Shet,  
s/o late M. Dathathreya Shet,  
9th Cross, Wilson Garden,  
Bangalore-27

8. M/S. Milan Wine Stores,  
by its Prop. M. Mohan Shet,  
s/o late Dathathreya Seth,  
6th Cross, Gandhinagar, Bangalore-9.

9. Barton Bar and Wine Centre,  
Prop. Smt. Sarojini  
w/o Mohan Sheth  
46 yrs, Kanakapura Road,  
Bangalore 82.

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10. M/S.Dimple Liquor,  
by its partner  
Smt.Sarojini  
Mysore Road, Bangalore-26

11. M/S.Raja Wine Stores,  
its partner M.Rajesh  
N.T.Pet, Bangalore-2.

PETITIONERS

(By Sri-S.V.Subramanyam, Adv.,)

AND:

1. State of Karnataka  
by its Secretary to Govt.,  
Finance Dept  
Vidhana Soudha,  
Bangalore-1

2. Asst. Commr., of Comml., Taxes,  
I addl., Circle,  
Gandhinagar,  
Bangalore 9.

RESPONDENTS

(By Sri/Smt.S.Sujatha, HCGP)

W.P.NO:18290/1998

M/S.Karthik Wines,  
Whole-sale Liquor Dealer,  
D.No.7, Ward No.6,  
Patel Nagar, Bellary,  
rep by its partner,  
Sri.K.Mallappa.

PETITIONER

(By Sri.S.Kanthappa, Adv.,)

AND:

1. State of Karnataka,  
by its Secretary,  
Dept of Finance,  
Vidhana Soudha  
Bangalore.

2.The Commr., of Comml., Taxes,  
Commercial Tax Building,  
KG Road, Gandhinagar  
Bangalore.

3.The Asst. Commr., of Comml Taxes,  
Ist Circle,  
Bellary.

RESPONDENTS

(By Smt.S.Sujatha, Adv HCGP)

1. W.P.No.18406-1505/1998

1. Babu Hemadappa Kalal,  
Cl-2 Licencee,  
Haveri.
2. Babu Hemadappa Kalal,  
CL-2 Licencee  
Taluk Shirahatte,  
Sadag Dist.
3. T.Venkatesh CL2 Licencee,  
Haveri.
4. T.Srinivas  
CL-2 Licencee  
Haveri.
5. G.C.Kunchorkat  
CL -2 Licencee,  
Ashwini Nagar,  
Haveri.
6. Smt. Indira  
Cl-9 Licencee,  
r/o Haveri.
7. S C Magavi  
Cl-2 Licencee,  
Hargari Road,  
Haveri.
8. S.N.Kotagi,  
CL-9 Licencee,  
Haveri.
9. Smt. Malini R. Chowshety  
Cl-2 Licencee  
Haveri.
10. Y.R.Ladwa,  
Cl-2 Licencee,  
Mallin Pate  
Haveri.
11. M. Manjunatha  
Cl-9 Licencee,  
Haveri.
12. G.C. Magavi, CL-2  
Haveri.
13. S.A. Kalal  
Cl-2 Licencee,  
Haveri.

14. AR Kalal,  
Cl-2 Licencee, Haveri.
15. S.R. Kotti  
Cl-2 Licencee,  
Gutal  
Haveri.
16. P.I. Aakalwadi,  
Cl-9 Licencee  
Navin Wine,  
Haveri,
17. P.S. Kalal  
Cl-2 Licencee  
Haveri.
18. S.K. Bansehall,  
Cl-2 Licencee,  
Haveri
19. B.C. Shetter,  
Raju Wines,  
Cl-2 licencee,  
Haveri.
20. C.M. Chivati  
Cl-2 Licencee,  
VV Road, Shiggaon  
Haveri.
21. G<sup>3</sup>/<sub>4</sub> H. Iyalgar,  
Cl-2 Licencee,  
Hosaritti,  
Haveri.
22. P.D. Hegadal  
Cl-9 Licensee,  
Hasaritti  
Haveri.
23. N.M. Malanad  
Cl-9 Licencee, Hacagari Taluk  
Ranebennur Haveri.
24. S.R. Kalal  
Cl-2 Licencee,  
Ranebennur.  
Haveri.
25. Shreoavi Enterpris s  
Cl-2 Licencee,  
Devamaguda  
Ranebennur Taluk  
Haveri.



- 26.S.V.Kalal  
Cl-2 Licencee  
Haveri.
- 27.K.M.Hasabi  
CL-2 Licencee,  
Guggal  
Haveri.
- 28.V.M.Bennur  
Cl-2 Licencee,  
Guttal  
Haveri.
- 29.. Niven Wines  
Stall No.3 Mp No.452/B/1  
Kalaghatagi  
Cl-2 Licencee,
30. V.M.Chanduar  
463-B Cl-2 Licencee  
Karwar Road,  
Kalaghatagi.
31. M/S.S.V.Tandur & Co.,  
Mesharikati  
by S.V.Tandur  
Taluk Kalaghatagi  
Dharwar.
- 32.M/S.Sathyanarayana Wine Center  
No.195, Yella pate Kalagatigi,  
Dharwar, Cl.2 Licencee.
33. Reambo Lickers  
Cl-2 Licencee  
Kalagatigi r/o Dharwar.
34. Vijayalakshmi Enterprises,  
Jaydvai Circle Road,  
Mallikargun Co  
r/o Southes Shettu  
Davangere.
- 35.JH Kalal  
Anand Peg Bar,  
Vijaya Road, Dharwad.
- 36.Subhas Motekar  
Nartaki Brandy Shop  
Anand Peg Bar,  
Vijay Road,  
Dharwad.

37. R T Shetty  
Sitara Bar  
Vijay Road,  
Dharwad.
38. R.S. Kalal  
Akshay Bar  
Maratha Colony  
Dharwad.
39. D.G. Shetty  
Vijay Wine Store  
Maratha Colony  
Dharwad.
40. Ashok Kabade  
M/S. Mahalakshmi Wine Store,  
Jakani Bhavi Road,  
Dharwad.
41. G.S. Kulkarni  
M/S. G.S. Kulkarni & Bros  
Praveen Peg Bar  
Jakani Bhavi Road,  
Dharwad.
42. A.A. Kalal  
Majestic Wine Centre  
Jakani Bhavi Road,  
Dharwad.
43. M.C. Katare  
M/S. Katare and Bros  
Raghavendra Brandy Shop  
Jakani Bhavi Road,  
Dharwad.
44. T.G. Kabadī  
Laxmi Wines  
Subhas Road,  
Dharwad.
45. Ramchander Kabadī  
Kabadī Wines Stores,  
Nehru Market,  
Dharwad.
46. R.L. Kabadī  
M/S. Gyanaba Bar and Restaurant,  
Vijay Road,  
Dharwad.
47. Smt. SS Shetty,  
Varsha Bar and Restaurant,  
Vijay Road, Dharwad.

48. Vittal Meharwade  
Jayalaxmi Beer Brandy Shop,  
Tikkare Road,  
Dharwad.
49. Suresh Hegadi,  
M/S. New Prabhat Foreign  
Lio Stores  
Station Road,  
Dharwad.
- 50 R.S. Shetty  
Ashok Bar and Rest.,  
P.B. Road,  
Dharwad.
51. Shrinivans Katore  
M/S. K.C. Kathare & sons,  
Line Bazar,  
Dharwad.
52. Sri. S. Jayram Shetty,  
Sheetal Bar and rest.,  
Saraswatpur  
Dharwad.
53. Balakrishna Hegadi  
M/S. Ramakrishna Enterprises,  
Cheras Bar and Rest.,  
Vijay Road,  
Dharwad.
54. D.K. Kathare,  
DK Bar , Nehru Market,  
Dharwad.
55. Jai Santoshima & Co.,  
Subhas Road,  
Dharwad.
56. Naryan Kalal  
M/S. Durga Bar  
Shbhas Road,  
Dharwad.
57. B.Y. Kalal  
Renuka Beer Brandy Shop  
Super Market,  
Dharwad.
58. P.P. Kalal  
Sri. Enterprises, (wholesale)  
Jakani Bhavi Road, Dharwad.



59. S.R. Gadgkar  
Sagar Peg Bar  
Old Gress Market  
Dharwad.
60. S.G. Donerkar  
Prutvi Wines  
Subhad Road,  
Dharwad.
61. Smt. Bhavani S. Shetti  
President Bar  
Station Road,  
Dharwad.
62. R.M. Shetty,  
Varibhav Bar and Rest.,  
PB Road,  
Dharwad.
63. Sadanandashetty,  
~~xxx~~ M/S. Pearl Liquors  
Rear Bar and Restaurant,  
PB Road,  
Dharwad.
64. Ramesh Shetty,  
Three T's Enterprises,  
Trishul Bar and Rest.,  
P.B Road, Dharwad.
65. B.N. Shettu  
Gandharva Bar and Rest.,  
Line Bazar  
Dharwad.
66. R.M. Shetty,  
Vaishali Bar and Rest.,  
CBT Near Vijay Talkies  
Dharwad
67. Vittal Rao Bandarkar  
Kalal Bar and Rest.,  
Prashant Bar  
CBT Dharwad.
68. R.S. Prabhakar  
Nataraj Brandy Shop  
Vijay Road, Dharwad.
69. A.K. Ganore,  
Godavari Bar and Restaurant,  
Dharwad.
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70. Smt. S.l.Sanglikar  
Akkipeth  
Dharwad.
71. R.P.Raichur  
Snjotha Wines  
Vijay Road,  
Dharwad.
72. K F Pasalkar  
near CBT  
Akki peth  
Dharwad.
- 73.Dinesh Kalal  
Adarsha Peg Bar  
Alnawar  
Dharwad.
- 74.Krishna Sagalika  
Siddeshwar Wines,  
Wholesale Wine Dealers,  
Gross Market,  
Dharwad.
- 75.Mahesh Muddan Shetty,  
GN Road,  
Dhandeli  
Karwar,
- 76.Mohandas S B Duagerakar  
Market Road,  
Haliyal  
Karwar.
- 77Venkataramany S.  
RK Bar  
NM Road , Ramnagar  
Bangalore Rural.
- 78.Ramesh K.  
Sangeetha Bar and Rest.,  
Ramnagar
- 79.R.Rajsha Gowda,  
Cl-2 Licencee  
Hungenan  
Dist Bagalkot,
80. R.Rajeshwergowda  
Cl-9 licencee  
Bagalkot.
- 81.R.Rajeshwar Gowda  
Cl-9 licencee,  
Irkal, Bagalkot

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82. Byali,  
Cl-2 Licencee,  
Aminguad  
Bagalkot

83. PN Shingari  
Cl.2 Licencee  
Guladgudda  
Bagalkot.

84. PN Shingri  
Cl-2 licencee  
Guladgudda  
Bagalkot

85. SR malli  
Cl-2 licencee  
Badami  
Bagalkot.

86. Bhanashawri  
Cl-9 licencee  
Bagalkot

87. S.B. Rujar  
Cl-2 Licencee,  
Bilagi  
Gijapur

88. SV Tandour  
Cl9 Licencee  
Sirur  
Bagalkot.

89. PY Nuchi  
Cl 9 licencee  
Mahalingupura  
Bagalkot.

90. Amhar ali,  
Srinivas Breandy shop  
cl-2 licencee  
bagalkot

91. VJ Nagaral  
cl-2 licencee  
Talikota  
Bijapur.

92. DR Mulla  
Cl-2 licencee  
Basavangudi  
Bijapur.

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93. Smt.K.A Nadal  
Cl-2 licencee  
Jamakahndi  
Bijapur

94. BV Vaijapur  
Cl-2 licencee  
Kustagi  
Koppal

95. BH Irkal alankar Bar and Rest.,  
Cl-9 licencee  
yadageri  
Raichur

96. BH Irkal Prabhatwines  
cl 2 licencee  
Narayanapur  
Gulbarga.

97. Chanmallpa Patil  
cl-9 licencee  
Supur  
Gulbarga.

98. E. Jayamma  
Cl-2 licencee  
r/o wadi  
Gulbarga.

99. AE Ramalu  
Cl-2 licencee  
wadi (J)  
Gulbarga.

100. JN Banti  
Vijay wines, MPC  
Raibag, Harugeri  
Belgaum Dist.

PETITIONERS...

(By Sri.Satish R.Girji, Adv.,)

AND:

1. The State of Karnataka  
rep by its Secretary  
finance Dept  
vidhana soudha  
Bangalore.

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2. The commr., of comml taxes  
Commrl Tax building.  
KG Road, Bangalore.
3. The Dy. Commr of Comm., Taxes  
Dharwad
4. The Dy. Commr., of Comm., Taxes  
Gadag.
5. The Dy. Commr of Commercial Taxes  
Bagalkot
6. The Dy. Commr., of comm., Taxes  
Bijapur.
7. The Dy. Commr., of Comm., Taxes  
Gulbarga District.
8. The Dy. Commr., of Comm., Taxes  
Bangalore Rural District.  
Commercial Tax building,  
Bangalore.
9. The Dy. Commr of Comm., Taxes  
Belgaum Divn,  
Belgaum.

RESPONDENTS

(By Smt.S.sujatha, HCGP)

These petitions are filed praying to quash the proviso to clause (a) to sub-section (4) of Sec.10-A of the KST Act declaring it violative of the provisions of the Constitution.

These petitions coming on for preliminary hearing this day, the court made the following:-

O R D E R



O R D E R

All these writ petitions are disposed by a common order since the controversy involved is common.

2. For the sake of convenience the facts of the case in W.P.15741/98 are taken into consideration. The petitioner is registered under the provisions of the Karnataka Sales Tax Act, 1957 and it is stated that the tax are being paid regularly. The petitioner received a notice under Section 10A of the Act demanding security deposit of Rs.90,000/- to be deposited within 7 days from the date of receipt of the notice. This demand of security has been made in view of the amendment of the provision to Section 10A (4) clause (a). In Section 10A (4) clause (a) was added by which in respect of liquor and/or beer of different categories the State Government was empowered to fix the amount of security by issue of notification. A notification dated 31-3-1998 was issued by the State Government which is as under (Annexure-E) :

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" NOTIFICATION

No.FD CSL 97, Bangalore, Dated 31-3-98  
Karnataka Gazette, Dated 31-3-98.

In exercise of the powers conferred by the proviso to clause (a) of sub-section (4) of section 10-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25/1957), the Government of Karnataka hereby fixes with effect from First day of April, 1998, the amount of Security mentioned in column (3) of the table below in respect of the category of dealers mentioned corresponding entries in column (2), who are dealing in liquor and/or beer, namely:-

Sl. No.	Category of Dealer	Amount of Security Deposit
1.	Distilleries Manufacturing	
	(a) Rectified spirit	Rs. 6,50,000/-
	(b) Indian made Foreign Liquor	7,50,000/-
	(c) Fenny	2,00,000/-
	(d) wine	1,00,000/-
2.	Breweries.	6,50,000/-
3.	Wholesale Dealers doing Business	
	(a) in the area of City Corporation having population of 20 lakhs and above	3,00,000/-
	(b) in other areas	2,50,000/-
4.	Retail Dealers doing Business	
	(a) in the area of City Corporation having a population of 20 lakhs and above	75,000/-
	(b) in the area of other Corporation having population less than 20 lakhs.	60,000/-

(c) in the area of City Municipal Council	..	Rs. 55,000/-
(d) in the area of a Town Municipal Council.		45,000/-
(e) in the areas other than those mentioned in items (a) to (d) above.		35,000/-
5. Hotels and Bording Houses doing business.		
(a) in the area of City Corporation having a population of 20 lakhs and above.		Rs. 1,10,000/-
(b) in the area of other Corporation having population less than 20 Lkhs.		95,000/-
(c) in the area of city Municipal Council		70,000/-
(d) in the area of a Town Municipal Council		60,000/-
(e) in the areas other than those mentioned in items (a) to (d) above.		45,000/-
6. Bars doing business.		
(a) in the area of City Corporation having a population of 20 lakhs and above .		90,000/-
(b) in the area of other Corporation having population less than 20 lakhs.		75,000/-
(c) in the area of City Municipal Council		60,000/-
(d) in the area of a Town Municipal Council		45,000/-
(e) in the areas other than those mentioned in items (a) to (d) above.		35,000/-
7. Pubs.		20,000/-



3. In the statement of objections filed by the respondents it is stated that Section 10(4)(a ) is the provision in general wherein by inserting the proviso to the said provision, different categories of dealers in liquor/Beer are taken out from the said provision. The proviso is inserted to remove the special cases from the general enactment and provide for them specially. The intention of the legislature to amend the Act by introducing the proviso is to ensure proper recovery or collection of taxes due to the State and the proper custody/proper use of statutory forms. By experience it has come to the notice of the department that certain class of dealers dealing in special commodities are defaulters in payment of tax or are evading payment of tax. The avoidance or evasion of tax is identified by the department in the dealers dealing in special commodities like Arecanut, Cashew, Cardamom, Coconut, Timber, Pepper, Cotton, Copra, Coffee, Oil Seeds, Edible and liquor. Hence the State legislature has amended the provisions of Sec.10A with a view to ensure proper tax compliance from dealers dealing in liquor.

3A. So far as the constitutional validity or violation of Art. 14 of the Constitution is concerned it is sufficient to observe that the legislature has wide

range and flexibility in the matter of taxation and may pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably, as held in KHYERBARI TEA CO. LTD vs. STATE OF ASSAM (AIR 1964 S.C.925). In the matter of security which is for enforcement of liability of tax, the object with which classification is made is reasonable and cannot be considered to be violative of the provisions of the Constitution. It cannot be considered to be unreasonable or mala fide exercise on the part of the State Government.

4. The main contention which has been raised is that the proviso has gone contrary to the main section and that it is also in conflict with the provisions of sub-section (8) of Section 10A of the Act. It is submitted that since the requirement of reasonable opportunity has been dispensed with, the proviso is against the principles of natural justice and contrary to Articles 14 and 265 of the Constitution of India as well as sub-section (8) of Section 10A. It is also submitted that according to Rule 12-A of the Karnataka Sales Tax Rules, notice for security

is required to be given in writing to furnish security within such time as may be specified for an amount not exceeding the limits prescribed in clause (b) of sub-section (4) of Section 10A and the assessing authority has to take into consideration the taxable turnover of the dealer and other factors. An option has been given under sub-rule (1) of Rule 12A to the dealer to furnish security in any of the four modes prescribed thereunder. The validity of the proviso to Sec.10A of the Act have been assailed on the ground that it is contrary to the provisions of Rule 12A. For the proper appreciation of arguments, provisions of Sec.10A(4)(a), 10A(8) and Rule 12A<sup>are</sup> reproduced <sup>hereunder</sup> :-

"10A(4)(a) - The prescribed authority shall for good and sufficient reasons demand from any dealer who is registered or has applied for registration under sub-section (1) or has applied for renewal of registration under this Act, security for proper payment of tax by him or for the proper custody and use of the forms referred to in Section 5-A or sub-section (2) of Section 28-A or both and on such demand such dealer shall furnish the same.

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Provided that in the case of different categories of dealers in liquor and/or beer, the prescribed authority shall demand security, for proper payment of tax as the State Government may fix from time to time by notification.

Sec. 10<sup>A</sup>(8) No application for registration and no renewal under this Section shall be refused and no order under sub-section (4) or sub-section (7) shall be made, unless the dealer concerned has been given a reasonable opportunity of being heard. "

Rule-12A. Security to be furnished by certain dealers.-

(1) Where the Assessing Authority or the Registering Authority, as the case may be, is of the opinion that a dealer who has been registered or has applied for registration or for renewal of registration should furnish security or additional security for the proper payment of tax payable by him, the said authority may direct him in writing, to furnish within such time as may be specified by such authority security for an amount not exceeding the limits prescribed in clause (b) of sub-section (4) of Section 10-A. For purposes of determining the amount of security, the Assessing Authority of the Registering Authority, as the the case

may be, shall take into account, the taxable turnover of the dealer, if any at the time of such determination, the nature of the goods dealt with by him and such other factors as may in the opinion of the said authority assist it in making a proper determination.

(2) Such security may be furnished by the dealer in any of the following ways, namely,-

(a) by depositing as security in the Government Treasury the amount fixed by the said authority, or

(b) by depositing with the said authority Government securities for the amount fixed by the said authority, or

(c) by depositing security amount in the post Office Savings Bank and pledging the Pass Book to and depositing it with the said authority, or

(d) by furnishing to the said authority a guarantee from a Scheduled Bank as defined in the Reserve Bank of India Act, 1934 agreeing to pay the State Government on demand, the amount of security fixed by the said authority."

5. In some of the cases the petitioners have been required to deposit the amount in cash while in others Bank Guarantee or National Savings Certificates ( NSC ) have been directed to be

furnished.

6. Arguments of both sides have been heard. So far as the question of exclusion of opportunity of hearing under the proviso is concerned the observations in the case of BATES vs. LORD HALLSHAM OF ST. MARYLEBONE-(1972) WLR 1373 page 1378 are relevant as under :

" Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially are never consulted in the process of enacting that legislation; and yet they have no remedy. Of course, the informal consultation of representative bodies by the legislative authority is a common place; but although a few statutes have specifically provided for general process of publishing draft delegated legislation and considering objections .. I do not know of any implied right to be consulted or make objections, or any principle upon which the courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given."

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The above observations were approved by the Apex Court in TULSIPUR SUGAR CO. vs. NOTIFIED AREA COMMITTEE ( AIR 1980 SC 882 ) and in the case of UNION OF INDIA vs. CYNAMIDE INDIA LTD( AIR 1987 SC 1802 ) and observed thus :

"legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice or for a hearing. There are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate-- , in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation... But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity."

The apex court has held that the legislature has plenary jurisdiction to exclude the rules of natural justice. That exclusion may be by express provision

or by necessary implication. In the said case the principles of natural justice have been expressly provided by the statute itself.

7. In the case of C.B. GAUTAM vs. UNION OF INDIA & ORs. ( 1993 - 199 ITR 530) question had arisen with regard to the application of principles of natural justice and the Apex court observed thus:

" It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity."

IN UNION OF INDIA vs. COL. J.N.SINHA (AIR 1971 SC 40)  
it is observed thus :

"Rule of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this court in KRIPAK vs. UNION OF INDIA (AIR 1970 SC 150), the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can



operate only in areas not covered by any law validly made. The other words they do not supplant the law but supplement it. It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if, on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

In *OLGA TELLIS vs. BOMBAY MUNICIPAL CORPORATION* (AIR 1986 SC 180) the Supreme Court observed thus:

" It must further be presumed that, while

vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule (Hear the other side) could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence. "

Since there is statutory exclusion of hearing for fixing the quantum of security for liquor/beer dealers, principles of natural justice cannot be said to be violated, State Government was not required to give the opportunity before fixing the quantum of security to each of the dealers.

8. The question which has been now raised is that the proviso is contrary to the main section itself

In this regard the observation in the case of HINDUSTAN IDEALINSURANCE CO. LTD. vs. LIFE INSURANCE CORPORATION OF INDIA ( AIR 1963 SC 1083 ) <sup>are relevant where</sup> it is observed that where the main provision is clear its effect cannot be cut down by the proviso. But where it is not clear the proviso, which cannot be presumed to be surplusage, can properly be looked into to ascertain the meaning and scope of the main provision. In the case of COMMISSIONER OF COMMERCIAL TAXES & ORS. vs. RAMKISHAN SHRIKRISHAN JHAVER & ORS. ( 20 STC 453 ), similar contention was raised that the proviso is otiose. The apex court held that the proviso is an exception to the main part of section, but it is recognised that in exceptional cases a proviso may be substantive provision itself. It is further observed as under :

" We may in this connection refer to RHONDDA URBAN DISTRICT COUNCIL vs. TAFF VALE RAILWAY CO. where section 51 of the Act there under consideration was framed as a proviso to proceeding sections. The Lord Chancellor however pointed out that "though section 51 was framed as a proviso upon preceding sections, but it is true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that

which goes before. "

Again in Commissioner of INCOME TAX vs. NANDLAL BHANDARI & SONS (1963- 47 ITR 803) it was observed that "though ordinarily a proviso restricts restricts rather than enlarges the meaning of the provision to which it is appended, at times the legislature embodies a substantive provision in a proviso. The question whether a proviso is by way of an exception or a condition to the substantive provision, or whether it is in itself a substantive provision, must be determined on the substance of the proviso and not its form."

Finally in STATE OF RAJASTHAN vs. LEELA JAIN- (1965) 1 SCR 276, the question arose whether the proviso in the Act under consideration there was a limiting provision to the main provision or was a substantive provision in itself. This Court observed that "so far as general principle of construction of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part". But it was further observed that the proviso in that particular case was really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which was prohibited by the main part of the section, an alternative was provided."

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9. Reliance was also placed in DWARKA PRASAD vs. DWARKA DASS SARAF ( AIR 1975 SC 1758) that "if, on a fair construction the principal provision is clear, a proviso cannot expand or limit it. A proviso must be limited to the subject matter of the enacting clause."

10. In the case of M/s. APHALI PHARMACEUTICALS LTD. vs. STATE OF MAHARASHTRA & ORS. (AIR 1989 S.C. 2227) it was observed " An explanation is different in nature from a proviso for a proviso excepts, excludes or restricts while an explanation explains or clarifies."

11. The principles have been laid down by the Apex Court in the case of S. SUNDARAM PILLAI vs. V.R. PATTABIRAMAN (AIR 1985 S.C.582) which are as under : (para-42)

" 42. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a provision may serve four different purposes :

- (1) qualifying or excepting certain provisions from the main enactment.
- (2) it may entirely change the very concept of the intendment of the enactment

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by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable.

- (4) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

12. It is clear that the proviso to Sec.10-A(4)(a) is dealing with the subject matter which is contained in the main section i.e. furnishing of security for proper payment of tax or for the proper custody and use of the forms. The proviso has only carved an exception from the main section and has not run contrary to the power conferred in the main section. In respect of all dealers, the prescribed authority may demand security, but in respect of liquor and/ or Beer, the security to be furnished has been fixed by the Government. The power to demand security is not left to the discretion of the prescribed authority. It may be by way of experience or as has been pointed out by the learned counsel for the respondents

that huge arrears of taxes are due and payable by the Dealers in liquor and/or Beer and in order to safeguard the interests of the revenue the notification was issued. The proviso therefore which has carved an exception from the main section has only conferred that power of fixing the amount of security by the State Government in case of dealers in liquor and/or Beer. And such amount as maybe fixed by the State Government under the proviso cannot, therefore, be said to be contrary to the main section or Section 2(1)(k) of the Act.

13. The next contention which has been raised is that the proviso is contrary to the provisions of sub-clause ~~3 (a)~~ of Sec.10-A. In this regard it maybe observed that there is requirement of an opportunity being give to a dealer under Section 10<sup>A</sup>(8) <sup>without which</sup> ~~which says that~~ No application for registration and no renewal under this Section shall be refused. That opportunity has to be given in all cases under Sec.10<sup>A</sup>(8). The proviso to Sec.10<sup>A</sup>(4)(a) is not subject to Sec.10<sup>A</sup>(8) and as observed above, it is an independent provision carving the exception to the main section conferring power to the State Government to fix the minimum

amount of security. If the amount of security is fixed by the State Government, then it is not necessary that a notice under Sec.10(8) has to be given. Fixing the amount of security by the State Government in respect of Dealers of wine/liquor even does not require a notice to be issued by the State Government and provisions of Sec.10-A are not attracted. As such it cannot be said that Sec.10-A(4)(a) of the Act is contrary to Sec.10 A(8). There may be refusal for grant of licence or renewal on the ground that the assessee has not furnished security. That is only a consequence and it does not affect the validity of the proviso to Section 10-A(4 )(a).of the Act.

14. Question was also raised that the demand of security or additional security while fixing the amount is arbitrary exercise of power on the part of the State Government and the amount so fixed are excessive. So far as fixation of the amount under the notification dated 31-3-1998 is concerned it may be observed that the notification is based on 50% of the amount of anticipated tax. In a particular circumstance the notification may sometimes cause hardship. As observed by



the Apex Court in KHODAY DISTILLERIES LTD. & ORs. vs. STATE OF KARNATAKA & ORs. - (1995)1 SCC 574, there is no fundamental right in carrying on business in liquor.

15. The validity of demand of security was examined in NANDLAL RAJ KISHAN vs. COMMISSIONER OF SALES TAX, DELHI & ANR. (1961- 12 STC 324). Therein it was held that the power to levy a tax includes the power to impose reasonable safeguards in collecting it and demanding security for the proper payment of the tax payable under the Act is neither an arbitrary nor an unreasonable restriction. It was also observed that the amount that can be demanded as security must depend on the nature of the business and its turnover and must have relation to the payment of the tax for which the person concerned might become liable under the Act. The provision cannot be considered contrary to Article 14 or 265 of the Constitution of India.

16. Another contention which has been raised is that the provisions of Rule 12-A have contemplated taking into consideration the taxable turnover of the dealer. In the case of new dealer Form No. I

has to be submitted and in column No.6 the annual expected turnover has to be mentioned. In the case of already registered dealer, turnover has to be disclosed monthly from which the tax liability can be seen. The validity of the proviso to Sec.10-A (4) (a) could not be examined in the context of Rule 12-A of the Rules. It is vice versa and whenever the validity of the provisions of the Act has to be examined it has to be with reference to the other provisions of the Act or the Constitution of India or the Central Act. Validity of the Rule could be examined with reference to the provisions of the Act, but the validity of the section cannot be examined with reference to the provisions of the rules which have been framed by the delegated authority. In view of these observations, it cannot be said that the provisions of Sec.10-A(4)(a) of the Act are violative of Rule 12-A of the Rules irrespective of Section 38 of the KST Act.

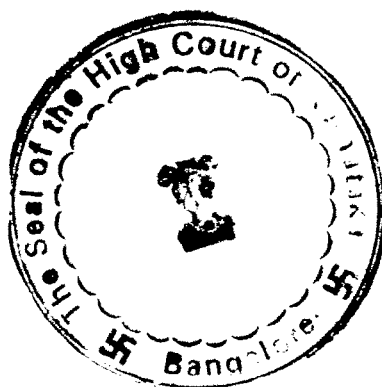
17. The last question that remains is with regard to the nature of security which can be demanded. Provisions of Rule 12-A(2) have not been excluded impliedly or by any specific provisions with regard to the dealers in liquor and/or

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Beer. Therefore, it is the option of the dealer to furnish security in any mode mentioned under Rule 12-A(2) of the Rules. If the Assessing Authority <sup>is</sup> ~~was~~ not satisfied with the options exercised by the dealer for furnishing security under sub-rule (2) of Rule 12-A, in that case he has to give an opportunity to the assessee and then pass reasoned order. The security, therefore, which has been demanded by way of cash or National Savings Certificate or Bank guarantee is not in accordance with the provisions of Rule 12-A (2) of the Rules. Therefore, the notices which have been issued to the petitioners herein are quashed only to the extent of the nature of security demanded and it is left to the option of the dealers to furnish security of any of the modes prescribed under Rule 12-A (2) of the Rules.

18. The writ Petitions are disposed of with the above observation.

Sd/-  
JUDGE



knpp/-